

PROPOSED LANGUAGE

Hate Crimes Framework and Policy, Commission Regulation 1081

1081. Minimum Standards for Legislatively Mandated Courses.

- (a) Legislatively mandated courses, as specified in Commission Regulation 1005(f), pertain to training mandated by the Legislature for various kinds of peace officers and other groups for which the Commission has responsibility to establish minimum standards. The Commission may approve legislatively mandated courses that can be completed in fewer than the minimum hours. In such cases, the courses must be competency-based, where each student demonstrates mastery of clearly specified learning outcomes. Legislatively mandated courses shall meet the following minimum content and hours. Regulations 1052-1056 specify the requirement for certification and presentation of these courses.

Credit for legislatively mandated courses that can be completed in fewer hours when using technology-based delivery (i.e., interactive multimedia) will be the same number of hours credited for a traditional instructor-led course. Testing is required to demonstrate competency.

[Alcoholic Beverage Control (ABC) – Electronic Surveillance continued ***]

Hate Crimes Framework and Policy **Implements Penal Code §13519.6**

Every state law-enforcement department shall adopt a framework and formal policy (herein incorporated by reference) as specified in the *Hate Crimes Policy Guidelines* (2008) publication.

[Hearsay Testimony Course – The *Pursuit Driving Update* ... continued ***]

Authority cited: Sections 831.4, 12002(f), 12403.5, 13503, 13506, 13510, 13511.3, 13515, 13519(f), 13519.4, 13519.8, 13519.12, 13519.14 and 13778, Penal Code.

Reference: Sections 832, 832.1, 832.2, 832.3, 832.6, 872(b), 12002(f), 12403, 12403.5, 13503(e), 13510, 13510.5, 13511.3, 13515, 13515.25, 13515.55, 13516, 13517, 13519, 13519(e), 13519.1, 13519.2, 13519.3, 13519.4, 13519.8, 13519.12, 13519.14 and 13778, Penal Code; Sections 40600 and 40802, Vehicle Code; Section 25755, Business and Professions Code; and Section 1797.187, Health and Safety Code.

HATE CRIMES POLICY GUIDELINES

This document, *Hate Crimes Policy Guidelines*, has been developed pursuant to Penal Code § 13519.6. All local law enforcement agencies are encouraged to adopt a formal policy on investigation of hate crimes, and all state law enforcement agencies are *required* to adopt and promulgate such a formal policy. In furtherance of this, the following Hate Crimes documents have been created:

- Guidelines (Attachment 1)
- Message from the Agency Chief Executive (Attachment 2)
- Model Policy Framework (Attachment 3)

The following seven guidelines identify the primary elements that law enforcement executives should incorporate into their hate crimes policy (*Hate Crimes Model Policy Framework* attached) and operational programs. The guidelines are designed for department-wide application and are intended to reflect a values-driven "top-down" process. They are intended to assist with development and delivery of training and ensure accurate and timely reporting of crime.

- 1. Develop the foundation for the agency's hate crimes policy.**
- 2. Develop a hate crimes policy for the agency.**
- 3. Develop expertise to identify and investigate hate crimes.**
- 4. Develop and implement cooperative hate crimes plans with other local and regional law enforcement agencies, as appropriate.**
- 5. Develop and implement cooperative hate crimes plans with the community, as appropriate.**
- 6. Develop and implement a hate crimes training program for appropriate agency personnel.**
- 7. Conduct an annual assessment of the agency hate crimes policy and its ongoing implementation.**

Guideline 1 Develop the foundation for agency's hate crimes policy.

The law enforcement executive is responsible for providing the leadership, communicating the values, and delivering the education that establishes the foundation for the agency's hate crimes policy. Employees will respond appropriately to hate crimes and hate incidents when the executive effectively establishes and communicates the foundational values of the organization (see Message from the Agency Executive).

Guideline 2 Develop a hate crimes policy for the agency.

An agency's hate crimes policy and programs should minimally include the following:

- a. Response,
- b. Reporting,
- c. Training,
- d. Planning, and
- e. Prevention. These elements should be community and multi-agency based. (*Refer to POST's Model Policy Framework*).

The law enforcement executive is responsible for the initial development of the policy and should be actively involved in its implementation.

Guideline 3 Develop expertise to identify and investigate hate crimes.

The law enforcement executive is responsible for ensuring that the agency possesses expertise to identify and investigate hate crimes, as well as ensuring compliance with state and federal reporting and public information requirements.

Hate crimes are a low frequency contact with high-risk consequences for the agency and community and stressful for first responders. A check list for Hate Crimes ensures compliance and preparedness in handling investigations in non-combative manner by those first on the scene. Possible examples:

- Describe the victims' location, emotional state, and physical condition.
- If possible, record the victims' statements.
- Indicate on body diagrams the location of any injuries for both suspects/victims.
- Influence of drugs or alcohol.
- Photograph scene and injuries (not all agencies have Crime Scene Investigations unit).
- Ask the victim for the name, address, and phone number of two close friends or relatives who will know of his/her whereabouts 6-12 months from the time the investigation begins.

Continue the checklist with boxes for the suspects, witnesses, evidence, and victim referral information provided to victim.

Guideline 4 Develop and implement cooperative hate crimes plans with other local and regional law enforcement agencies, as appropriate.

1. Coordinate cooperative efforts among area law enforcement agencies to share information and training, and to develop strategies to prevent hate crime activity.
2. Develop law enforcement intelligence networks to enhance the agency's ability to anticipate potential hate crime targets. This interaction should include cooperative investigations, arrests, and prosecutions.

Guideline 5 Develop and implement cooperative hate crimes plans with the community, as appropriate.

1. Collaboration with the community provides agencies with the ability to enlist support to help law enforcement obtain witness and victim cooperation, as well as to gain assistance from the community in the prevention, investigation, arrest, and prosecution of hate crimes. Collaborative partnerships with community organizations can assist law enforcement in providing support services to victims.
2. Law enforcement outreach to local schools and colleges can help enhance awareness.
3. Law enforcement should seek educational information from/about specific communities (immigrant, Islamic, Arabic, etc.) to strengthen agency awareness.
4. Working with stakeholders to develop a network and protocol for response to hate crimes associated with anti-immigrant, anti-Arab, anti-Islamic, persons with disabilities, and anti-gay communities can assist in handling and managing such crimes.

Agencies must use the annually required hate crimes report from the Department of Justice as a source of public information on local hate crime incidents. For publications, see <http://ag.ca.gov/cjsc/pubs.php>.

NOTE: Community groups typically include, but are not limited to, human relations/civil rights organizations, advocacy groups, service organizations, neighborhood associations, and religious institutions.

Guideline 6 Develop and implement a hate crimes training program for appropriate agency personnel.

A. The training should include the following:

1. Legal definitions of hate crimes, hate incidents, and protected characteristics.
2. Indicators of hate crimes and hate literature.

3. Typologies of perpetrators of hate crimes and incidents.
4. The role of all department personnel as they relate to agency response to hate crimes and incidents.
5. Law enforcement procedures in data collection/documentation/ and mandated reporting requirements.
NOTE: Although hate incidents are not included under mandated reporting, agencies are strongly encouraged to require the documentation of hate incidents for the following purposes:
 - a) Establish history and patterns of bias behavior, which can support motive.
 - b) Source of intelligence gathering.
 - c) Incidents can be precursors to crime.
 - d) Community outcry may require law enforcement response.
6. Interviewing people with disabilities and being aware of and providing appropriate accommodations (such as ADA standards, Braille, visuals, etc.).
NOTE: Research indicates that disability-biased crimes are significantly underreported and require additional effort in the investigation.
7. Informing community organizations in a timely manner when a community group has been the target of a hate crime.
8. Orientation on communities of specific targeted victims such as immigrants, Muslims, and Arabs.
9. Techniques and methods on how to identify and handle hate crimes or incidents committed that involve gender-bias, disability-bias (including homeless persons with disabilities), or anti-immigrant, anti-Arab, or anti-Islamic bias.
10. Hate groups versus gang- and hate-motivated activities involving gang members.
11. Recognition that some hate crime perpetrators are multi-mission oriented extremists and not only commit violence against protected characteristics but also against women's health clinic personnel, the homeless, or government.
12. Understanding the California Freedom of Access to Clinic and Church Entrances Act (FACE) and when anti-reproductive rights crimes may be hate crimes.
13. Knowledge of laws dealing with hate crimes and legal rights of hate crime victims.
14. Informing victim, victim's family, and community of local resources. Provide recognition of benefits and compensation available through the Victim Compensation Program and local victim assistance services.
15. Recognition of the psychological impact hate crimes and hate incidents have on the victim, victim's family, and the community, and the specialized response needed by law enforcement to effectively handle these incidents.

16. Techniques and methods to handle hate crime incidents in a non-combative manner.
17. Response to and investigation of any reports of hate crimes committed under the color of authority.

B. Delivery of training on hate crimes has optimal effectiveness when the instructional team includes:

1. A law enforcement officer/deputy with knowledge of hate crimes investigations.
2. A prosecutor or legal representative with knowledge of hate crime laws and prosecution.
3. A victim/witness advocate or representative of a community-based organization or government agency who has experience working with victims of hate crimes.

Guideline 7 Conduct an annual assessment of the agency hate crimes policy and its ongoing implementation.

The assessment should include:

1. A review for continuity with the Hate Crimes Guidelines.
2. A review and analysis of the agency's annual report on hate crimes and incidents.
3. A review and updating of the department's information pamphlet to ensure compliance with Penal Code Section 422.92.
4. A review of the Attorney General's latest opinion on hate crime statistics and preparation for planning for future crimes and/or crime waves, specifically targeted at Arab/Middle Eastern and Islamic communities.

DATE: JANUARY 2008

TO: ALL PERSONNEL

FROM: AGENCY CHIEF EXECUTIVE

RE: IMPLEMENTATION OF HATE CRIMES POLICY

Hate crimes affect not only individual victims but can negatively impact entire communities. In the transmittal letter of the 2004 California Senate Office of Research report, *Protecting Californians from Hate Crimes*, it was reported that hate crimes, like any form of criminal behavior, are triply harmful.

- They hurt the immediate victims by inflicting loss and pain, the same as any violent crime.
- They attack the immediate victim's very identity, often causing more severe and longer-lasting trauma than similar violent crimes committed for other reasons.
- They cause fear in the communities they target.

Crimes motivated by hate are not simply assaults, property damage, or violations of civil rights. They are crimes that specifically target individuals with particular characteristics. As such, they provide fuel to the prejudices and fears that underlie these crimes in the first place, thus continuing the cycle of hatred, prejudice, and bias.

The broad impact of hate crimes makes them a major concern for all law enforcement agencies. It is essential that this agency address hate crimes in a manner that most effectively accomplishes prevention and rapid apprehension of perpetrators.

I. Purpose

Along with POST's *Hate Crimes Policy Guidelines*, this model policy framework is designed to assist in identifying and handling crimes motivated by hate and bias toward individuals with legally defined protected characteristics, to define appropriate steps for assisting victims, and to provide a guide to conducting related investigations. It outlines the general policy framework for response, reporting, training, planning, and prevention as related to law enforcement's role in handling hate crimes.

II. Policy

It is the policy of this agency to safeguard the rights of all individuals irrespective of their disability, gender, nationality, race or ethnicity, religion, sexual orientation, and/or association with a person or group with one or more of these actual or perceived characteristics. Any acts or threats of violence, property damage, harassment, intimidation, or other crimes motivated by hate or bias should be viewed very seriously and given high priority.

This agency will employ necessary resources and vigorous law enforcement action to identify and arrest hate crime perpetrators. Also, recognizing the particular fears and distress typically suffered by victims, the potential for reprisal and escalation of violence and the far-reaching negative consequences of these crimes on the community, this agency shall attend to the security and related concerns of the immediate victims and their families.

III. Definitions and Laws

In accordance with California Penal Code § 422.55, § 422.56, and § 422.6, for purposes of all other state law unless an explicit provision of law or the context clearly requires a different meaning, the following should apply:

1. "Hate crime" means a criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim.
 - a. "In whole or in part because of" means that the bias motivation must be a cause in fact of the offense, whether or not other causes also exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the particular result. There is no requirement that the bias be a main factor, or that the crime would not have been committed but for the actual or perceived characteristic.
 - b. "Disability" includes mental disability and physical disability as defined in § 12926 of the Government Code.
 - c. "Gender" means sex and includes a person's gender identity and gender related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.
 - d. "Nationality" includes citizenship, country of origin, and national origin.
 - e. "Race or Ethnicity" includes ancestry, color, and ethnic background.
 - f. "Religion" includes all aspects of religious belief, observance, and practice and includes agnosticism and atheism.
 - g. "Sexual orientation" means heterosexuality, homosexuality, or bisexuality.
 - h. "Association with a person or group with these actual or perceived characteristics" includes advocacy for, identification with, or being on the ground owned or rented by, or adjacent to, any of the following: a community center, educational facility, family, individual, office, meeting hall, place of worship,

private institution, public agency, library, or other entity, group, or person that has, or is identified with people who have, one or more of those characteristics listed in the definition of "hate crime" under paragraphs 1 to 6, inclusive, of subdivision (a) of § 422.55.

2. "Victim" includes, but is not limited to, a community center, educational facility, entity, family, group, individual, office, meeting hall, person, place of worship, private institution, public agency, library, or other victim or intended victim of the offense.
3. Interference with exercise of civil rights because of actual or perceived characteristics of victim, as specified in Penal Code § 422.6.
 - a. No person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States in whole or in part because of one or more of the actual or perceived characteristics of the victim listed in subdivision (a) of Penal Code § 422.55.
 - b. No person, whether or not acting under color of law, shall knowingly deface, damage, or destroy the real or personal property of any other person for the purpose of intimidating or interfering with the free exercise or enjoyment of any right or privilege secured to the other person by the Constitution or laws of this state or by the Constitution or laws of the United States, in whole or in part because of one or more of the actual or perceived characteristics of the victim listed in subdivision (a) of Penal Code § 422.55.

NOTE: In compliance with Penal Code §13519.6, additional legal references to California Criminal Statutes involving hate crimes for misdemeanor and felony statutes can be found in the following, but not limited to, Penal Code Sections: § 139, § 302, § 422.7, § 422.9, § 594.3(a), § 11411.

IV. Response and Reporting Procedures

Peace officers have important roles to play in responding to and documenting hate incidents and crimes. By doing the job efficiently and carefully, officers can reinforce the message that hate crimes will be investigated aggressively, thus enhancing the likelihood of a successful prosecution. A swift and strong response by law enforcement can help stabilize and calm the community as well as aid in a victim's recovery. Failure to respond to hate crimes within agency guidelines may jeopardize public safety and leave officers and departments open to increased scrutiny and possible liability. Additionally, establishing methods to handle each investigation in a non-combative manner will assist the investigation.

First Response Procedures

First responding officers at the scene of a suspected hate or bias crime or incident should take preliminary actions deemed necessary, to include, but not limited to, the following:

1. Stabilize the victim(s) and request medical attention when necessary.
2. Ensure the safety of victims, witnesses, and perpetrators.
3. Collect and photograph physical evidence or indicators of hate crimes such as:
 - a. Hate literature.
 - b. Spray paint cans.
 - c. Threatening letters.
 - d. Symbolic symbols used by hate groups (e.g., swastikas, graffiti).

4. Identify criminal evidence on the victim.
5. Request the assistance of translators or interpreters when needed to establish effective communication.
6. Conduct a preliminary investigation; record information on:
 - a. Identity of suspected perpetrator(s).
 - b. Identity of witnesses, including those no longer at the scene.
 - c. Prior occurrences, in this area or with this victim.
 - d. Statements made by suspects; exact wording is critical.

Supervisory Responsibilities

The supervisor shall confer with the initial responding officer(s), and ensure that necessary preliminary actions have been taken. The supervisor shall request any appropriate personnel necessary to accomplish the following:

1. Provide immediate assistance to the crime victim.
 - a. Express the law enforcement agency's official position on the importance of these cases and the measures that will be taken to apprehend the perpetrators.
 - b. Express the department's interest in protecting victims' anonymity whenever possible.
 - c. Allow the victim a period in which to ventilate his/her immediate concerns and to express his/her feelings.
 - d. Identify individuals or agencies that may provide support, assistance and remedy (such as the victim compensation and assistance program available at www.victimcompensation.ca.gov or 800.777.9229). Local victim assistance resources may include family members or close

acquaintances, clergy or departmental chaplain, as well as community service agencies that provide shelter, food, clothing, child care, or other related services.

2. Ensure that all relevant facts are documented on an incident and/or arrest report and make an initial determination as to whether the incident should be classified as a hate crime for federal and state bias crime-reporting purposes.
3. Notify other appropriate personnel in the chain of command, depending on the nature and seriousness of the offense and its potential inflammatory and related impact on the community.
4. In cases of large scale hate crime waves, respond to protect vulnerable sites (such as assigning an officer at specific locations that could become targets).
5. Ensure that hate crime is properly reported, which includes reporting to the Department of Justice, pursuant to Penal Code § 13023.
6. Ensure adherence to Penal Code § 422.93, which protects hate crime victims and witnesses from being reported to federal immigration authorities if they have not committed any crime under state law.
7. Respond to and investigate any reports of hate crimes committed under the color of authority.
8. Provide assistance, as appropriate, including activating the Department of Justice hate crimes rapid response protocol.
9. Report any suspected multi-mission extremists crimes to the agency terrorism liaison officer (TLO), or assigned designee, and direct the TLO/designee to send the data to the Joint Regional Information Exchange System.

Investigative Responsibilities

When conducting a thorough follow-up investigation, investigators should:

1. Ensure that the crime scene is properly protected, preserved, and processed and that all physical evidence of the incident is removed as soon as possible after the offense is documented. If evidence of an inflammatory nature cannot be physically removed (e.g., painted words or signs on a wall), the property owner should be contacted to ensure that it is removed as soon as possible. The officer should follow up to ensure that this is accomplished in a timely manner.
2. Canvass the area for additional witnesses and to eliminate non-witnesses by recording (video/audio) their statement of what they saw and where they were when the incident took place. Video protects the integrity of the investigation in court, media reporting, internal affairs investigations, and any legal cases where witnesses or non-witnesses may be influenced to dramatically change their original statement.
3. Coordinate the investigation with agency, state, and regional intelligence operations. These sources can provide the investigating officer with an analysis of any patterns, organized hate groups, and suspects potentially involved in the offense.
4. Coordinate the investigation with the identification unit and other units of the agency and with outside agencies where appropriate.
5. Make a final determination as to whether the incident should be classified as a hate crime.
6. Complete any reports necessary to comply with statistical reporting requirements for hate crimes.
7. Take steps to ensure the appropriate assistance is provided to hate crime

victim(s), including the following measures:

- a. Contact the victim periodically to determine whether he/she is receiving adequate and appropriate assistance.
- b. Provide ongoing information to the victim about the status of the criminal investigation.
8. Develop techniques and methods to identify and handle hate crimes or incidents committed that specifically involve categories of:
 - a. Gender.
 - b. Disability (including homeless persons with disabilities).
 - c. Anti-immigrant.
 - d. Anti-Arab.
 - e. Anti-Islamic.
9. Gain knowledge of multi-mission criminal extremists that specifically involve:
 - a. Nexus of certain hate crimes.
 - b. Anti-government.
 - c. Anti-reproductive rights.
 - d. Actual or perceived homelessness.
10. Prepare and respond for possible future crime waves, specifically for:
 - a. Anti-Arab/Middle Eastern.
 - b. Anti-Islamic.
 - c. Attorney General's determination.
11. Provide the supervisor, public information officer, or designee with information that can be responsibly reported to the media. When appropriate, the law enforcement media spokesperson should reiterate that the hate crime will not be tolerated, will be taken seriously, and will be prosecuted to the full extent of the law.
12. Coordinate with other law enforcement agencies in the area to assess patterns of

hate crimes and determine if organized hate groups are involved.

13. Complete reports required by other agencies.

V. Training Resources

POST offers training and video courses to assist law enforcement. These courses provide officers with information and skills necessary to be effective. Various training programs include the history and definitions of hate crimes, recognition of hate groups, international terrorism, legal considerations, victims' considerations, initial response duties, victim interviewing and care, suspect identification and interrogation, evidence identification, report writing, the role of law enforcement, investigative strategies, intelligence collection, supervisory roles, community relations, media relations and local program training development, and other topics such as proper use of computer systems and methods for reporting.

For more information on POST training opportunities, visit the POST website at www.post.ca.gov and select the 'Course Catalog' option.

In conjunction with POST training opportunities, trainers may utilize other state and federal agencies that offer training courses, such as the U.S. Department of Justice 800.421.6770.

VI. Planning and Prevention

Hate crimes are not only a crime against the targeted victim(s) but also have impacts on the victim's family and community. Working constructively with segments of this larger community after such crimes is essential to help reduce fears, stem possible retaliation, prevent additional hate crimes, and encourage any other previously victimized individuals to step forward and report such crimes. This is particularly important if an upward trend has been identified in these crimes.

Towards this end, this agency's community relations function, or officers so assigned, should perform the following:

1. Meet with residents in target communities to allay fears; emphasize the agency's concern over this and related incidents; reduce the potential for counter-violence; and provide safety, security, and crime prevention information.
2. Provide direct and referral assistance to the victim and his/her family.
3. Conduct public meetings on hate crime threats and violence in general.
4. Establish liaison with formal community-based organizations and leaders.
5. Expand, where appropriate, preventive programs such as hate, bias, and crime reduction seminars for school children.
6. Review the Attorney General's latest opinion on hate crime statistics and targets in order to prepare and plan for future crimes, specifically for Arab/Middle Eastern and Islamic communities.
7. Provide orientation on communities of specific targeted victims such as immigrants, Muslims, and Arabs.